

# ANALYSIS OF ORIGINAL BILL

## Franchise Tax Board

Author: Bowen Analyst: Roger Lackey Bill Number: SB 2051  
Related Bills: See Legislative History Telephone: 845-3627 Introduced Date: 02-22-2002  
Attorney: Patrick Kusiak Sponsor: Franchise Tax Board

**SUBJECT:** Conform to Federal Law to Exempt Tax Information and Liability From IPA Amendment Procedures and Remedies

### SUMMARY

This bill would prohibit taxpayers from amending their income tax returns using the Information Practices Act of 1977 (IPA).

### PURPOSE OF THE BILL

The purpose of this FTB sponsored legislation is to affirm that the proper method of altering or disputing a taxpayer's tax liability is under the statutes provided in the Revenue and Taxation Code (R&TC).

### EFFECTIVE/OPERATIVE DATE

This proposal would be effective and operative January 1, 2003, and would apply on or after that date.

### POSITION

Support.

On March 6, 2002, the Franchise Tax Board voted 2-0 to sponsor this provision.

### EFFECTIVE/OPERATIVE DATE

This provision would be effective and operative January 1, 2003, and would apply after that date.

### ANALYSIS

#### FEDERAL/STATE LAW

The Federal Privacy Act (FPA) provides individuals specific rights and protection in regard to their personal records. Among other provisions, the FPA requires agencies to comply with an individual's request for personal records and establishes procedures for an individual to request amendment of those records. The FPA also creates a cause of action if the agency fails to comply with the FPA.

#### Board Position:

<u>  X  </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> PENDING

#### Department Director

#### Date

Gerald H. Goldberg

04/12/02

Current state law provides for the Information Practices Act of 1977 (IPA). The IPA is closely modeled after the FPA and provides an individual the same rights to request and amend records, and cause of action as that discussed above.

The IRC specifically excludes tax information and matters related to tax liability from the FPA record amendment process. The IRC also excludes any cause of action for the failure to comply with request for documents under the FPA.

Federal and state law allows taxpayers to alter their tax liability for a taxable year by allowing them to file an amended tax return under either the IRC for federal taxes and under the RT&C for California taxes. An amended return may result in the taxpayer having a reduced tax liability, in which case, the amended return is considered a claim for refund.

Federal and state law also provides the Internal Revenue Service and the Franchise Tax Board (FTB) the authority to issue proposed income tax assessments. Taxpayers may receive a proposed income tax assessment for a particular year. This assessment may state that the taxpayer did not file a return or the return understated the tax liability and additional tax is owed. In addition to other manners of disputing the assessment (protest and appeal), a taxpayer may pay the assessment and file a claim for refund refuting the adjustments that resulted in additional tax.

The R&TC provides no express exclusion from complying with the IPA's amendment process or its causes of action for FTB.

### THIS BILL

This provision would prevent a person from using the IPA to:

- Request corrections to their income tax accounts,
- Appeal the denial of their requests to amend their tax records, and,
- Require copies of their statement disagreeing with the denial of their request to amend their records be made part of the official record, and
- File a cause of action against FTB for not complying with a taxpayer's request to amend their income tax liability using the IPA amendment process..

This provision would conform California law to the federal law that provides a single process for a taxpayer to dispute or amend their income tax liability, which is through the revenue code.

### IMPLEMENTATION CONSIDERATIONS

Implementing this bill would allow the department to require taxpayers to use the tax return amendment and dispute resolution processes found in the R&TC for altering their tax records or disputing their tax liability. Implementing this provision would not significantly impact the department's programs and operations.

### **LEGISLATIVE HISTORY**

SB 1660 (Scott, 2001/2002) among other items has a provision identical to this provision. This bill is awaiting a hearing date.

## **PROGRAM BACKGROUND**

The IRC excludes tax information and matters related to tax liability from the record amendment procedures and causes of action under the FPA because tax dispute procedures are intended to be the sole manner for disputing matters related to tax liability. The R&TC already affords the taxpayer the same method for altering or disputing a tax matter as is provided by the IRC. This bill would exclude matters related to the correct amount of tax liability from the IPA in the same manner as the IRC exclusion from the FPA.

## **OTHER STATES' INFORMATION**

The laws of *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York* were reviewed because of their similarities to California's laws. Each of these states has a specific process for challenging and disputing a taxpayers income tax liability.

## **FISCAL IMPACT**

This provision would not significantly impact the department's costs.

## **ECONOMIC IMPACT**

This provision would not impact the state's income tax revenue.

## **LEGISLATIVE STAFF CONTACT**

Roger Lackey  
Franchise Tax Board  
845-3627

Brian Putler  
Franchise Tax Board  
845-6333